



U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON ENERGY AND COMMERCE

December 3, 2019

TO: Republican Members, Committee on Energy and Commerce

FROM: Committee Republican Staff

RE: Hearing on “Accountability and Oversight of the Federal Communications Commission.”

## **I. INTRODUCTION**

The Committee on Energy and Commerce will hold a hearing on Thursday, December 5, 2019, at 10:00 a.m. in 2123 Rayburn House Office Building. The hearing is entitled “Accountability and Oversight of the Federal Communications Commission.”

## **II. WITNESS**

- The Honorable Ajit Pai, Chairman, Federal Communications Commission
- The Honorable Michael O’Rielly, Commissioner, Federal Communications Commission
- The Honorable Brendan Carr, Commissioner, Federal Communications Commission
- The Honorable Jessica Rosenworcel, Commissioner, Federal Communications Commission
- The Honorable Geoffrey Starks, Commissioner, Federal Communications Commission

## **III. BACKGROUND AND DISCUSSION**

The Federal Communications Commission (FCC) is an independent agency established pursuant to the Communications Act of 1934 (the Act) to regulate interstate and international communications by radio, television, wire, satellite, and cable. The agency is comprised of five Commissioners, appointed by the President and confirmed by the Senate.<sup>1</sup> The agency currently has approximately 1,450 full time employees.<sup>2</sup>

In March 2018, Congress reauthorized the FCC for the first time since 1990, appropriating \$333,118,000 for fiscal year 2019 and \$339,610,000 for fiscal year 2020 to carry out the functions of the agency.<sup>3</sup> This reauthorization effort, passed in RAY BAUM’S Act as Division P of the Consolidated Appropriations Act for Fiscal Year 2018 (FY18) (P.L. 115-141), was a bipartisan, bicameral agreement that included provisions from 18 bills by Committee members.

<sup>1</sup> Communications Act of 1934, 47 U.S.C. §154.

<sup>2</sup> See, FY 2020 Budget. Available at: <https://docs.fcc.gov/public/attachments/DOC-356607A2.pdf>

<sup>3</sup> P.L. 115-141.

## **A. Selected Issues**

### **1. Public Safety**

One of the core statutory functions of the FCC is to promote public safety through the use of wire and radio communication.<sup>4</sup> As part of this mission, the FCC plays an important role in making sure broadcasters and emergency alerting technologies effectively warn the public of impending emergencies as well as assisting in the recovery of communications networks following disasters.

Following the aftermath of Hurricanes Harvey, Irma, and Maria in 2017, the FCC provided support to rebuild infrastructure and restore critical communications services in Texas, Florida, and Puerto Rico, with additional support directed to communications networks in Puerto Rico and the U.S. Virgin Islands, which were particularly impacted by hurricanes.<sup>5</sup> On September 5, 2019, the FCC took action to make available up to \$950 million in funding for resilient fixed and mobile broadband networks in Puerto Rico and the U.S. Virgin Islands.<sup>6</sup>

#### *Emergency Alert System*

The Emergency Alert System (EAS) is the nation's primary alerting system to warn the public of impending emergencies. The system currently requires broadcasters, cable television systems, wireless cable systems, satellite digital audio radio service providers, and direct broadcast satellite (DBS) providers to provide communications capability to allow the President to address the American public during a national emergency.<sup>7</sup> In its more familiar form, EAS is used to distribute emergency alerts issued by state and local governments and weather alerts issued by the National Weather Service (NWS). The Federal Emergency Management Administration (FEMA), in partnership with the FCC and National Oceanic and Atmospheric Administration (NOAA), is responsible for operating and maintaining EAS at the federal level.

There are two general delivery mechanisms that the FCC oversees in cooperation with FEMA to deliver these warnings: 1) EAS, a broadcast-based national public warning system for the delivery of alerts; and 2) Wireless Emergency Alerts (WEA), a system for the delivery of emergency alerts to mobile devices.<sup>8</sup> In 2016, the FCC modernized WEA.<sup>9</sup> In that order, the FCC increased the maximum alert message length from 90 to 360 characters; created a new alert message classification

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<sup>4</sup> Communications Act of 1934, 47 U.S.C. §154.

<sup>5</sup> See, Order, Notice of Proposed Rulemaking, *Uniendo a Puerto Rico and the Connect USVI Fund Rulemaking, et al.*, FCC 18-57 (2018). Available at: <https://docs.fcc.gov/public/attachments/FCC-18-57A1.docx>

<sup>6</sup> See, Report and Order, *Uniendo a Puerto Rico Fund and the Connect USVI Fund*. (WC Docket Nos. 18-143, 10-90, and 14-58). Available at: <https://docs.fcc.gov/public/attachments/DOC-359492A1.pdf>

<sup>7</sup> Originally conceived at a time “when over-the-air broadcasting was the best-available technology for widely disseminating emergency alerts[.]” the inclusion of cable services, digital radio and DBS reflect upgrades in response to changing consumer consumption patterns and innovations in technology. See, *Emergency Alerting, Capabilities Have Improved, but Additional Guidance and Testing Are Needed*, United States Government Accountability Office, GAO-13-375, April 2013. Available at: <https://www.gao.gov/assets/660/654136.pdf>.

<sup>8</sup> See, Notice of Proposed Order and Further Notice of Proposed Rulemaking, *In the Matter of Wireless Emergency Alerts, Amendments to Part 11 of the Commission's Rules Regarding the Emergency Alert System*, PS Docket No. 15-91, PS Docket No. 15-94, (2016). Available at: [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-16-127A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-127A1.pdf).

<sup>9</sup> *Id.*

for “Public Safety Messages”; required participating providers to support embedded references (i.e., URLs and phone numbers); required participating providers to support transmission of Spanish-language alert messages; and required participating providers to narrow their geographic targeting (geo-targeting) of alert messages.

In July 2018, the FCC further improved the reliability of EAS. In an order adopted on July 12, 2018, the FCC established procedures for authorized state and local officials to conduct “live code” tests of the Emergency Alert System to help train officials and the public about how to respond to actual alerts.<sup>10</sup> The order also allows for authorized public service announcements to further educate the public while establishing safeguards to help prevent false alerts and account for any such false alerts. The FCC, in coordination with FEMA, hosted an emergency alerting webinar on July 25, 2018, to share these important updates with broadcasters, multichannel video programming distributors, wireless service providers, state and local emergency managers, and other emergency alert and warning stakeholders.<sup>11</sup> Like all broadcasters, EAS is subject to harmful interference from pirate radio operators operating illegally without a license. To combat this threat to public safety, on February 25, 2019, the House passed H.R. 583, the PIRATE Act by voice vote.

#### *9-1-1 and Next Generation 9-1-1*

Congress and the FCC, in cooperation with the National Telecommunications and Information Administration (NTIA), have been working to improve 9-1-1 and Enhanced 9-1-1 (E911) services and facilitate the transition to Next Generation 9-1-1 (NG911). Improvements to 9-1-1 caller information were incorporated into RAY BAUM’s Act as a follow up to Kari’s Law Act, which enabled 9-1-1 calls from multi-line telephone systems (MLTS). Under this provision, the FCC was required to conclude a proceeding within 18 months that provides that call location information is conveyed with a 9-1-1 call, regardless of the platform used, including MLTS. In August 2019, the Commission implemented this provision of RAY BAUM’S Act by adopting a Report and Order to help ensure Public Safety Answering Points (PSAPs) can quickly and accurately locate every 9-1-1 caller, regardless of whether the caller used an MLTS system or another system.<sup>12</sup>

Funding for 9-1-1 service is primarily handled at the state and local level, generally through monthly line item charges on wireline and wireless bills. In 2017, \$2.94 billion was collected by states through these charges.<sup>13</sup> Unfortunately, a number of states have diverted these funds for other purposes. According to the FCC, over \$284 million, or approximately 9.7 percent of the total collected, was diverted for purposes other than 9-1-1.<sup>14</sup> Furthermore, the primary authority over PSAPs lies with state and local authorities. Some state statutes require the use of legacy network elements that are not included in NG911 architectures. These barriers, among others, demonstrate

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<sup>10</sup> *Amendment of Part 11 of the Commission’s Rules Regarding the Emergency Alert System*, PS Docket No. 15-94, Report and Order and Further Notice of Proposed Rulemaking, FCC 18-94 (Jul. 2018), available at <https://www.fcc.gov/document/fcc-promotes-emergency-alert-reliability-0>.

<sup>11</sup> See, <https://docs.fcc.gov/public/attachments/DA-18-722A1.doc>

<sup>12</sup> See, Report and Order, Implementing Kari’s Law and Section 506 of RAY BAUM’S Act, August 1, 2019. (PS Docket No. 18-261). Available at: <https://docs.fcc.gov/public/attachments/FCC-19-76A1.pdf>

<sup>13</sup> See, Federal Communications Commission Report, *Tenth Annual Report to Congress, On State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, Dec. 17, 2018, at 2, available at <https://www.fcc.gov/files/10thannual911feereporttocongresspdf>

<sup>14</sup> *Id.*

that increased funding alone will not ensure the transition to nationwide NG911. To help end diversion of 9-1-1 fees, H.R. 2165, the 9-1-1 Integrity Act, was introduced, which directs the FCC to clarify acceptable expenditures for 9-1-1 equipment and services.

## **2. Mapping and Deploying Broadband Infrastructure**

Another core part of the FCC's mission is to ensure universal consumer access to reasonably comparable communications services at reasonably comparable rates, otherwise known as universal service.<sup>15</sup> The FCC manages the Universal Service Fund (USF) through the Universal Service Administrative Company (USAC), a non-profit corporation designated by the FCC to administer nearly \$10 billion in USF funding through four different programs: 1) High-Cost, 2) Rural Health Care (RHC), 3) E-Rate (schools and libraries), and 4) Lifeline.

In August 2019, the FCC adopted a Notice of Proposed Rulemaking that would make available \$20.4 billion in high-cost support over the next decade.<sup>16</sup> This proposal would award funding in two phases, with roughly \$16 billion awarded in Phase I, and \$4.4 billion—plus any remaining funding from Phase I—awarded in Phase II.

In addition to modernizing the funding that supports broadband in remote and high cost areas, recent policy actions by Congress and the FCC strive to remove barriers to broadband deployment for both wireline and wireless infrastructure. The FCC's work in the 115th Congress to eliminate barriers to next-generation wireline networks and services includes streamlining discontinuances to incentivize providers to deploy faster networks while maintaining protections for consumers.<sup>17</sup> To advance wireless infrastructure, particularly in speeding the transition to 5G services, the FCC clarified treatment of small cell deployments and, among other things, excluded small wireless facilities deployed on non-Tribal lands from National Historic Preservation Act (NHPA) and National Environmental Policy Act (NEPA) review.<sup>18</sup> Additionally, the FCC proposed to update its over the air reception devices (OTARD) rules in April 2019 to facilitate the deployment of fixed wireless technologies.<sup>19</sup>

Broadband availability mapping continues to be a bipartisan, bicameral concern. In the House, Rep. Loebsack and Republican Leader Latta introduced H.R. 4229, the Broadband DATA Act, which would require the FCC to issue new rules to require the collection and dissemination of granular broadband availability data, and to establish a process to verify the accuracy of such data, among other things. H.R. 4229 was favorably reported to the House by voice vote on November 20, 2019. Additionally, Congress appropriated \$15 million to NTIA in total for FY18 and FY19 to build a national broadband map for Federal agencies to use when making broadband funding awards. NTIA recently announced that a pilot map has been completed.<sup>20</sup>

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<sup>15</sup> 47 U.S.C. 254(b)

<sup>16</sup> See, "Rural Digital Opportunity Fund," Notice of Proposed Rulemaking, Adopted August 1, 2019. Available at: <https://docs.fcc.gov/public/attachments/FCC-19-77A1.pdf>

<sup>17</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-74A1.docx>

<sup>18</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-30A1.docx>

<sup>19</sup> See, "Updating the Commission's Rules for over-the-air reception devices," Notice of Proposed Rulemaking. (WT Docket No. 19-71). Available at: <https://www.fcc.gov/document/fcc-proposes-modernize-rule-over-air-reception-devices-0>

<sup>20</sup> See, <https://www.ntia.doc.gov/blog/2019/ntia-releases-new-broadband-availability-map-pilot-policymakers>

### 3. Spectrum

Congress and the FCC have worked to make additional spectrum available and expand opportunities for next-generation wireless services in low, mid, and high-band spectrum through a variety of proceedings. Beyond examining specific bands for modernization, the Commission has also implemented Section 616 of RAY BAUM'S Act and acted to examine how to partition and disaggregate licenses, allowing smaller carriers to build out in places where licensees might not reach.<sup>21</sup>

In the mid-band Spectrum, the FCC adopted a Report and Order to create more flexibility in the 2.5 GHz band for terrestrial mobile wireless.<sup>22</sup> While this spectrum previously had a freeze on new applications since 1993 (with two exceptions), the FCC recognized the pent-up demand to access the spectrum, and the Order included an opportunity for Tribal nations to apply for new licenses.<sup>23</sup> In September 2019, the FCC approved several Spectrum Access System (SAS) administrators in the Citizens Broadband Radio Service (CBRS) Band, marking the launch of commercial deployment in the 3.5 GHz spectrum.<sup>24</sup> The FCC also sought comment on competitive bidding procedures for the Priority Access Licenses in the CBRS spectrum.<sup>25</sup> The Commission recently announced that they would pursue a public auction of 280 MHz of C-Band spectrum (3700 - 4200 MHz), reserving 20 MHz as a guard band.<sup>26</sup> Currently, C-Band is used by satellite operators largely to deliver video content to broadcast and MVPD head-ends across the country. C-Band spectrum is the largest contiguous block of mid-band spectrum, and it has been globally harmonized for terrestrial mobile wireless for use in 5G.<sup>27</sup>

The Commission has also focused on expanding access to unlicensed spectrum. In November 2019, Chairman Pai announced that the Commission will consider a proposal to open the 5.9 GHz band for unlicensed use, while keeping 30 MHz of the 75 MHz available for intelligent transportation services (ITS).<sup>28</sup> This proposal would make 45 MHz available for unlicensed use, which combined with the lower adjacent spectrum, would create a 160 MHz channel for Wi-Fi 6. Of the 30 MHz proposed to be designated for ITS, 20 MHz would be allocated for Cellular-Vehicle-to-Everything technology (C-V2X). The Commission would seek comment on whether the remaining 10 MHz should be available for Dedicated Short-Range Communications (DSRC) or allocated to C-V2X—pending the technical data submitted into the record. Additionally, the Commission has also opened an inquiry into making the 6 GHz band available for unlicensed use. In October 2018, the Commission adopted a notice of proposed rulemaking (NPRM), proposing to make the 6 GHz band

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<sup>21</sup> See, "Partitioning, Disaggregation, and Leasing of Spectrum," Notice of Proposed Rulemaking. (19-38) Adopted March 15, 2019. Available at: <https://docs.fcc.gov/public/attachments/FCC-19-22A1.pdf>

<sup>22</sup> See, "Transforming the 2.5 GHz band," Report and Order, Adopted July 10, 2019. (WT Docket No. 18-120). Available at: <https://docs.fcc.gov/public/attachments/FCC-19-62A1.pdf>

<sup>23</sup> *Id.*

<sup>24</sup> See, <https://docs.fcc.gov/public/attachments/DA-19-915A1.pdf>

<sup>25</sup> See, <https://docs.fcc.gov/public/attachments/FCC-19-96A1.pdf>

<sup>26</sup> See, Letter from Chairman Pai to Ranking Member Walden, November 18, 2019. Available at: <https://docs.fcc.gov/public/attachments/DOC-360855A7.pdf>

<sup>27</sup> See, <https://spectrum.ieee.org/telecom/wireless/3gpp-release-15-overview> (LTE Bands including 3.3-4.2 GHz)

<sup>28</sup> See, Chairman Pai remarks before Wififorward, November 20, 2019. Available at: <https://docs.fcc.gov/public/attachments/DOC-360918A1.pdf>



available for unlicensed use with appropriate interference protection.<sup>29</sup> Incumbents in the 6 GHz band include fixed microwave services used by public safety, utilities, and carriers, as well as auxiliary broadcast uses in certain cases. Others have also called for a portion of the 6 GHz band to be allocated for licensed-use.<sup>30</sup> In the high-band Spectrum, the FCC recently set the auction procedures for an incentive auction of spectrum in the upper 37 GHz, 39 GHz, and 47 GHz bands.<sup>31</sup>

Additionally, the FCC recently participated in the World Radio Conference-19 (WRC-19), a treaty-level conference hosted by the International Telecommunication Union (ITU), under the auspices of the United Nations. The World Radio Conference, held every four years, offers an opportunity to harmonize globally spectrum allocated for certain uses, as well as appropriate protection limits. In preparation for these conferences, the FCC has an advisory committee, which helps establish and provide recommendations to the U.S. delegation head to inform the United States unified position. At WRC-19, several U.S. positions were ultimately accepted

#### **4. Combatting Robocalls**

The FCC, with support from Congress, has focused consumer protection efforts on combatting unlawful robocalls and malicious caller ID spoofing. RAY BAUM'S Act included H.R. 423, the Anti-Spoofing Act of 2017, which prohibits spoofing calls or texts originating outside the U.S., tasked the FCC with conducting a rulemaking on the subject, required the FCC to work with the Federal Trade Commission (FTC) to educate consumers on identifying spoofed calls, and directed Government Accountability Office (GAO) to conduct a study on fraudulent, misleading, or inaccurate caller ID information. The FCC has also proposed and implemented a variety of policy initiatives to combat these unwanted, illegal calls. In June 2019, the FCC adopted a declaratory ruling to allow telecommunications carriers to block some robocalls before making it to consumers' phones.<sup>32</sup> In March 2018, the FCC sought comment on ways to reduce unwanted calls to reassigned numbers through the creation of a database.<sup>33</sup>

Industry has also aided the FCC by providing solutions to the problem by developing a set of procedures to authenticate caller ID information associated with telephone calls and assign these calls a secure, encrypted certificate—known as STIR/SHAKEN. The FCC recently accepted these recommendations, so the industry can establish this industry-developed call authentication system.<sup>34</sup>

In addition to these efforts, the U.S. Court of Appeals for the District of Columbia recently found in *ACA International v. FCC* that aspects of the Commission's most recent interpretation of

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<sup>29</sup> See, "Unlicensed Use of the 6 GHz Band," Notice of Proposed Rulemaking, October 23, 2018. (ET Docket No. 18-295). Available at: <https://docs.fcc.gov/public/attachments/FCC-18-147A1.pdf>

<sup>30</sup> See, CTIA Ex-Parte, November 15, 2019. Available at: <https://ecfsapi.fcc.gov/file/1115974613804/191115%20CTIA%206%20GHz%20Ex%20Parte%20Letter.pdf>

<sup>31</sup> See, <https://docs.fcc.gov/public/attachments/FCC-19-63A1.pdf>

<sup>32</sup> See, "Advanced Methods to Target and Eliminate Unlawful Robocalls," Declaratory Ruling and Third Notice of Proposed Rulemaking, (CG Docket No.17-59). Available at: <https://docs.fcc.gov/public/attachments/FCC-19-51A1.pdf>

<sup>33</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-31A1.docx>

<sup>34</sup> See, <https://docs.fcc.gov/public/attachments/DOC-350690A1.docx>

the Telephone Consumer Protection Act (TCPA) in 2015 were arbitrary and capricious.<sup>35</sup> Following *ACA International*, the FCC's Consumer and Governmental Affairs Bureau sought public comment in a Public Notice related to interpretation and implementation of the TCPA.<sup>36</sup> Both public and private sector entities have asked the FCC to clarify the aspects of its 2015 interpretation that were struck down by the court, including reviewing the definition of an automatic dialer and how businesses should treat reassigned numbers.<sup>37</sup> Furthering these important policy initiatives, in May 2018, the FCC issued a \$120 million fine against a massive "neighborhood spoofing" telemarketing operation.<sup>38</sup> This was the largest fine ever imposed by the FCC and is part of the over \$200 million in enforcement actions that the FCC has taken against telemarketers for apparent illegal caller ID spoofing. In response to the increasing problem of unlawful robocalls, and to help the FCC further combat these robocalls, the House passed H.R. 3375, the Stopping Bad Robocalls Act, 429-3.

## 5. Media Regulations

As the media landscape continues to change, the FCC has acted to remove dated media regulations. In 2017, Chairman Pai committed to review outdated media rules applicable to television and radio broadcasters, cable operators, and satellite television providers.<sup>39</sup> Since then, the FCC has taken steps to modernize a variety of regulations. Among those actions, the FCC has eliminated several restrictions on media ownership,<sup>40</sup> repealed a rule requiring a radio and television broadcast station to maintain a main studio location in or near its community of license,<sup>41</sup> removed rules requiring certain broadcast and cable entities to maintain paper copies of FCC rules,<sup>42</sup> and reduced broadcaster reporting obligations relating to the provision of ancillary or supplementary services.<sup>43</sup> These proposals are offered as actions designed to reflect the modern communications marketplace as previous regimes did not anticipate the rise of social media networks and over-the-top (OTT) streaming services.

On September 23, 2019, the Third Circuit Court, in *Prometheus Radio Project v. FCC*, vacated and remanded the "bulk of [the FCC's] actions in this area over the last three years."<sup>44</sup> On November 13, 2019, Judge Ambro released a statement denying the Commission's petition for rehearing *en banc*.

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<sup>35</sup> *ACA Int'l, et al. v. FCC*, 885 F.3d 687 (D.C. Cir. 2018) (affirming in part and vacating in part *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, 30 FCC Rcd 7961 (2015)).

<sup>36</sup> 47 U.S.C. § 227. The Commission's implementing rules are codified at 47 CFR § 64.1200.

<sup>37</sup> See, [https://mckinley.house.gov/UploadedFiles/7.10.2018\\_Final\\_TCPA\\_letter\\_to\\_FCC\\_Chairman\\_Pai.pdf](https://mckinley.house.gov/UploadedFiles/7.10.2018_Final_TCPA_letter_to_FCC_Chairman_Pai.pdf)

<sup>38</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-58A1.pdf>

<sup>39</sup> See, <https://docs.fcc.gov/public/attachments/FCC-17-58A1.docx>

<sup>40</sup> See, <https://docs.fcc.gov/public/attachments/FCC-17-156A1.pdf>

<sup>41</sup> See, <https://docs.fcc.gov/public/attachments/FCC-17-137A1.docx>

<sup>42</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-16A1.docx>

<sup>43</sup> See, <https://docs.fcc.gov/public/attachments/FCC-18-41A1.docx>

<sup>44</sup> *Prometheus Radio Project v. FCC*, United States Court of Appeals for the Third Circuit, September 23, 2019, at pg. 10. Available at: <http://www2.ca3.uscourts.gov/opinarch/171107p.pdf>

**IV. STAFF CONTACTS**

Please contact Kate O'Connor or Evan Viau of the Republican Committee staff at  
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